State of New Jersey
Department of Environmental Protection
Division of Enforcement, Technical and Financial Support
401 East State Street, 6th Floor West
PO Box 420
Trenton, New Jersey 08625
Telephone: (609) 984-2902
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IN THE MATTER OF	:	
THE LEVARI CITGO SITE	:	
10 ROUTE 9 SOUTH	:	
UPPER TOWNSHIP	:	
CAPE MAY COUNTY	:	**ADMINISTRATIVE**
	:	**CONSENT ORDER**
and	:	
	:	
SCARBOROUGH PROPERTIES, LLC	:	
PI # 001122 and PI # 73302	:	

The following ADMINISTRATIVE CONSENT ORDER is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey (the "Department") by N.J.S.A. 13:1D-1 to -19, and by the New Jersey Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 and pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund (the "Administrator") pursuant to the Spill Act and authority delegated to the Assistant Director of the Enforcement and Information Support Element within the Site Remediation Program pursuant to N.J.S.A. 13:1B-4.

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FINDINGS

Cleanup Chronology and Enforcement Actions at the Levari Citgo Site

1. The Levari Citgo site consists of 8,800 square feet of real property located at 10 Route 9 South, Upper Township, Cape May County, New Jersey, also known as Block 653, Lots 2, 3 and 4 on the Tax Map of Upper Township (the "Site"). The Site, and all other areas to which any hazardous substances discharged at the Site have migrated, are collectively referenced hereinafter as the "Contaminated Site."

2. In approximately 1982, David Levari began leasing the Site, and operated it as a

retail gasoline station and a doughnut shop.

3. On April 15, 1985, the Site was conveyed from Kevin and Marguerite Springer to David Levari (the "Owner"), who is the current owner of the Site.

4. The Owner operated a retail gasoline station at the Site until December 1998. On December 14, 1987, a gasoline spill at the Site was reported to the Cape May County Health Department. It was reported that the spill occurred during the filling of the Underground Storage Tanks ("USTs") at the Site.

5. In April 1988, the Owner's contractor performed soil sampling adjacent to two (2) 2,000 gallon USTs located at the Site. Sampling results revealed the presence of petroleum hydrocarbons at 2,728 parts per million ("ppm").

6. In June 1988, the Owner's contractor performed soil sampling adjacent to two (2) 2,000 gallon USTs located at the Site. Sampling results revealed the presence of petroleum hydrocarbons at levels ranging from 375 - 2,800 ppm.

7. On February 2, 1989, a representative from the Cape May County Health Department observed an open excavation at the Site. A strong petroleum odor was observed around the excavation and in the excavated soil. On February 10, 1989, the Cape May County Health Department reported the incident to the Department, and Case # 89-02-21-1320 was established.

8. On September 24, 1990, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment against the Owner for installing a Stage II vapor recovery system with six gasoline dispensing nozzles without the required permit.

9. By letter dated April 9, 1996, the Cape May Department of Health notified the Owner of sampling results from potable well samples that were taken at the Site on March 26 and 28, 1996. The sampling results revealed the presence of benzene at 371 parts per billion ("ppb") and xylenes at 97.7 ppb.

10. By letter dated April 28, 1996, the Department notified the Owner that Case # 89-02-21-1320 remained open and that the Owner had failed to initiate any investigation that was required. The Department instructed the Owner to submit the required Remedial Investigation report, and to close the UST systems at the Contaminated Site that have been out of service for more than twelve (12) months.

11. In February and April of 2000, the Department sampled the potable well at the Marmora Hardware Store located at 29 South Shore Road (Route 9), across the street (south) from the Site. Both water samples were tested for volatile organic compounds and found to contain benzene and Methyl Tertiary Butyl Ether ("MTBE") at levels in excess of the drinking water standards for those compounds specifically, 1 micro gram per liter ("ug/L") and 70 ug/L, respectively. The February 2000 sample was found to contain 1.2 ug/L of benzene and 220 ug/L

of MTBE. A detection of 106 ug/L of MTBE was reported in an April 2000 sample from the Marmora Hardware Store well.

12. On May 11, 2000, the Department performed an inspection at the Site and determined that soil excavated during the 1989 UST replacement was still present on the Site.

13. On May 23 and 24, 2000, the Department collected groundwater samples downgradient from the Contaminated Site in connection with an investigation into the sources of groundwater contamination in the area. Sampling results revealed the presence of benzene, toluene, ethylbenzene, xylenes and MTBE in the groundwater.

14. On May 25, 2000, the Department performed another site inspection at the Site, and checked the USTs at the Site for the presence of water, which is an indication of possible leaking USTs. Water was found in four of the Site USTs and Case No. 00-05-26-1808-23 was opened.

15. As a result of the discovery of free product on the water table beneath Pine Road and at the Site near the USTs, the Department issued a Field Directive/Notice to Insurer(s) to the Owner on July 11, 2000 (the "July 2000 Directive"). The July 2000 Directive required the facility's USTs to be emptied and removed from the Site, and submittal of a UST Closure Report within 90 days. The July 2000 Directive required a soil and groundwater investigation and delineation, product recovery, management of stockpiled soil, and a report of findings, as well as closure of the existing UST systems.

16. By letter dated December 6, 2000, the Department informed the Owner that because he did not comply with the July 2000 Directive, the Department was going to conduct the remedial investigation at the Contaminated Site using public funds.

17. In 2000, the Department commenced a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Department investigated the nature and extent of the contamination at the Contaminated Site.

18. In December 2001, the Department's contractor removed five USTs and closed two USTs at the Site.

19. In February 2002, the Department's contractor collected soil and groundwater samples at the Contaminated Site. Sampling results revealed the presence of benzene, toluene, ethylbenzene, xylenes ("BTEX") and MTBE that exceeded cleanup criteria in the soil and groundwater at the Contaminated Site.

20. In September 2003, the Department's contractor conducted a cone penetrometer technology ("CPT") field investigation at the Contaminated Site which revealed the presence of hydrocarbons. The CPT was equipped with a fuel fluorescence detector. The Department's contractor utilized the CPT equipment to map the subsurface extent of separate "free" phase hydrocarbons within a series of borings located throughout the area between the Site building and the Wawa property. The data indicated the presence of free phase hydrocarbons extending

between the Site building and Pine Road, beneath Pine Road, and terminating inside the Wawa property within approximately 50 feet of the western edge of Pine Road.

21. In March 2004, April 2006 and August 2007, a series of groundwater monitoring wells were sampled at the Contaminated Site. Sampling results revealed elevated levels of BTEX and MTBE in the groundwater which exceeded groundwater quality standards. Furthermore, free product was observed in groundwater monitoring wells during the March 2004 and August 2007 sampling events.

22. From, 2005-2007, the Department's contractors designed and constructed a Soil Vapor Extraction/Air Sparge ("SVE/AS") remediation system at the Contaminated Site. The SVE/AS system start-up was on August 23, 2007. At the neighboring Wawa property, recovery points and remedial system piping were installed to work in conjunction with the Contaminated Site SVE/AS system.

23. The Department intends to decommission the Soil Vapor Extraction/Air Sparge remediation system. Monitoring of the groundwater at the Site will continue until the Department determines, in its sole discretion, that it is no longer necessary.

24. In 2007, the Spill Compensation Fund ("Spill Fund") and the Department filed a Notice of First Priority Lien (the "2007 First Priority Lien") pursuant to the Spill Act against the Owner for $40,985.59. The 2007 First Priority Lien was entered on the Superior Court's civil judgment or order docket as DJ-205598-07.

25. In 2007, the Spill Fund and the Department filed a Notice of Lien (the "2007 Notice of Lien") pursuant to the Spill Act against the Owner for $40,985.59. The 2007 Notice of Lien was entered on the Superior Court's civil judgment or order docket as DJ-205594-07.

26. In 2011, the Spill Fund and the Department filed a Notice of Amended First Priority Lien pursuant to the Spill Act, which amended the 2007 First Priority Lien, against the Owner for $181,568.07.

27. In 2015, the Spill Fund and the Department filed a Notice of Amended Lien (the "2015 Notice of Amended Lien") against the Owner pursuant to the Spill Act and a Consent Judgment entered into between the Department and the Owner resolving litigation in New Jersey Department of Environmental Protection, et al., v. David Levari, Docket No. CPM-L-742-04. The 2015 Notice of Amended Lien is for a total of $50,000.

Cost Recovery Litigation and Settlements

28. On December 29, 2004, the Department and the Spill Fund (the "Plaintiffs") filed a complaint against the Owner and the Grace Oil Company pursuant to the Spill Compensation and Control Act and the common law, entitled New Jersey Department of Environmental Protection, et al., v. Grace Oil Company, et al., Docket No. CPM-L-742-04, seeking reimbursement of the costs the Plaintiffs incurred, and will incur, for the discharge of hazardous

substances at the Site and the Grace Oil Company property in Upper Township, Cape May County, New Jersey. Both the Site and the Grace Oil Company property were alleged to have contributed to the Allendale Road Groundwater Contamination Area in Upper Township, Cape May County, New Jersey. The complaint also sought damages for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Site and the Grace Oil Company property.

29. On August 29, 2005, the Plaintiffs filed an amended complaint against additional parties alleging that the Contaminated Site, the Grace Oil Company property and the CF Marmora property in Upper Township, Cape May County, New Jersey all contributed to the Allendale Road Groundwater Contamination Area. Furthermore, third-party complaints were filed against other third-party defendants.

30. On January 7, 2010, the Court entered a Consent Judgment with the Plaintiffs and the settling defendants/third-party defendants concerning reimbursement of the Plaintiffs' past cleanup and removal costs, future cleanup and removal costs and natural resource damages, (the "2010 Consent Judgment"). Furthermore, the owner of the Grace Oil Company property and the operator of the CF Marmora property (the "Properties") agreed to continue their remediation work at the Properties. The Owner of the Levari Citgo site was not a settling party in the 2010 Consent Judgment.

31. In 2010, the Plaintiffs made a motion for summary judgment against the Owner concerning the Plaintiffs' past cleanup and removal costs and future cleanup and removal costs concerning the Contaminated Site. On September 14, 2010, the Court determined that the Owner was strictly liable, jointly and severally, under the Spill Act for the Plaintiffs' past cleanup and removal costs and for all reasonable and necessary future cleanup and removal costs. However, the Court reserved decision and scheduled a trial on the amount of damages to be awarded to the Plaintiffs.

32. In 2011, the material terms of a settlement were reached with the Plaintiffs and the Owner, with the Court's assistance, concerning the Contaminated Site. However, the Owner objected to certain provisions in a proposed Consent Judgment.

33. In December 2011, the Court reviewed the proposed Consent Judgment and made revisions to it. The Owner agreed to all of the Court's revisions.

34. In December 2011, a revised Consent Judgment was sent to the Owner with the Court's revisions.

35. In January 2012, the Owner again objected to the provisions in the Consent Judgment. A telephone conference was held with the Court and the Court invited the Plaintiffs to file a motion to enforce the settlement agreement.

36. In 2012, the Plaintiffs filed a motion to enforce the settlement agreement reached with the Owner concerning the Contaminated Site. On October 26, 2012, the Court granted the

Plaintiffs' motion to enforce the settlement agreement, and approved the proposed Consent Judgment with modifications.

37. In 2012, the Plaintiffs submitted a revised Consent Judgment to the Owner that contained the Court's October 26, 2012 modifications.

38. In January 2013, the Owner requested two additional changes to the proposed Consent Judgment that were made by the Plaintiffs.

39. On May 6, 2013, pursuant to the Spill Act, the Department published notice of the Consent Judgment with the Owner in the New Jersey Register. On May 17, 2013, the Department also posted the Consent Judgment on the Department's web site for a 30-day public comment period. The Department did not receive any public comments on the Consent Judgment.

40. Pursuant to the terms of the October 26, 2012 Court Order, the Owner was required to sign the Consent Judgment after the 30-day public comment period. The Owner was unwilling to do so.

41. In 2014, the Plaintiffs filed an application with the Court to hold the Owner in Contempt of Court for failure to sign the Consent Judgment pursuant to the terms of the Court's October 26, 2012 Order.

42. On March 26, 2015, the Owner signed the Consent Judgment. The Plaintiffs then withdrew their application to hold the Owner in Contempt of Court. On March 31, 2015, the Court entered the Consent Judgment between the Plaintiffs and the Owner concerning the Contaminated Site.

The Complaint for Mortgage Foreclosure

43. On August 29, 2014, Scarborough Properties, LLC ("Scarborough Properties"), having its offices at 2 Eastwick Drive, Gibbsboro, New Jersey filed a complaint for mortgage foreclosure against David C. Levari, and others, concerning the Site. Scarborough Properties' complaint for foreclosure is entitled Scarborough Properties v. David C. Levari, et al., Docket No. F-037198-14, Cape May County.

44. On April 30, 2007, the Owner being indebted to the Bancorp Bank executed a promissory note in favor of the Bancorp Bank for $350,000 with interest at the rate of 8.5% per annum with the entire principal balance due no later than May 1, 2012.

45. To secure the promissory note, the Owner executed in favor of the Bancorp Bank a mortgage that encumbered the Site which was used as collateral. On May 9, 2007, the mortgage was recorded in the office of the Clerk of Cape May County, New Jersey in Mortgage Book 4577, Page 372 and c.

46. On May 1, 2012, the Owner failed to make monthly payments of principal and

interest to the Bancorp Bank and the monthly payments have remained unpaid for more than thirty (30) days.

47. On November 5, 2013, the mortgage and note were assigned to Scarborough Properties by the Bancorp Bank. The assignment was recorded in the Office of the Clerk of Cape May County, New Jersey in Assignment Book 333, page 485 and c.

48. Scarborough Properties, as assignee of the mortgage and note, has demanded that the whole principal sum together with unpaid interest shall be now due and payable by the Owner to Scarborough Properties. The Owner has not made the necessary payments and Scarborough Properties demands that the Site so mortgaged be sold according to law satisfying the amount due Scarborough Properties.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

49. Within ten (10) days after Scarborough Properties acquires title to the Site, Scarborough Properties shall pay $105,000 in satisfaction of the August 11, 2011 Notice of Amended First Priority Lien, Docket No. DJ-205598-07 (the "2011 Amended First Priority Lien") filed against the Site. Scarborough Properties shall pay the $105,000 by certified check made payable to the "Treasurer, State of New Jersey." Scarborough Properties shall mail or otherwise deliver the payment and any other payment documentation the Department requires, to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0023.

50. Upon payment of the $105,000 specified in paragraph 49, the Department shall promptly file a Warrant of Satisfaction with the Clerk of the Superior Court for the 2011 Amended First Priority Lien.

51. Scarborough Properties shall retain a Licensed Site Remediation Professional ("LSRP") pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., who shall be responsible for implementing the requirements that are imposed on Scarborough Properties by this Administrative Consent Order ("ACO").

52. Scarborough Properties shall be responsible for installing, monitoring and operating a sub-slab depressurization system that will address potential vapor intrusion in the existing building, and any other potential building(s), at the Site by following the Department's *Vapor Intrusion Technical Guidance* document.

53. Scarborough Properties shall apply for a remedial action permit for the sub-slab depressurization system referenced in paragraph 52 pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.1 et seq., (the "ARRCS rules"). Scarborough Properties shall also establish and maintain financial assurance pursuant to the

ARRCS rules for the sub-slab depressurization system.

54. If Scarborough Properties intends to demolish the existing building at the Site, Scarborough Properties shall provide to the Department thirty (30) days of advance written notice, as well as a copy of the demolition plans and shall obtain the approval of the Department prior to demolishing the building.

55. For any new construction at the Site, Scarborough Properties shall be responsible for installing a sub-slab depressurization system by following the Department's *Vapor Intrusion Technical Guidance* document to address potential vapor intrusion and satisfy the ARRCS rules for this engineering control.

56. The Department shall issue a groundwater classification exception area under the ARRCS rules and obtain a groundwater remedial action permit.

57. The Department shall be responsible to operate, maintain and decommission the current Soil Vapor Extraction/Air Sparge ("SVE/AS") remediation system at the Site. The SVE/AS system shall remain in operation until groundwater quality standards are met, or, in the Department's sole discretion, the Department determines that the operation of the SVE/AS system is no longer necessary or practicable.

58. In addition to the Department's statutory and regulatory authority to enter and inspect the Site, Scarborough Properties shall allow the Department and its authorized representatives access to all areas of the Site to:

a. remediate the Site as agreed;

b. monitor Scarborough Properties' compliance with this ACO;

c. perform any remedial investigation or remedial action that this ACO requires or the Department believes is necessary at the Site; and

d. assess, restore, or replace, or oversee the assessment, restoration or replacement of, any natural resource and natural resource service of this State injured by the discharge of hazardous substances at the Contaminated Site.

59. Scarborough Properties shall ensure that any sale or transfer of the Site is conditioned upon the Department and its authorized representatives having continuing access for the purposes stated in paragraph 58 above and full compliance with N.J.A.C. 7:26C-7 for the transfer and issuance of the vapor intrusion remedial action permit to the prospective purchaser as long as a vapor intrusion sub-slab depressurization system is required at this Site. All subsequent purchase agreements for the Site shall mandate that all future purchasers, without exception, fully comply with the requirements of this paragraph.

60. In consideration of the payment that Scarborough Properties is making pursuant to paragraph 49 above, and contingent on the satisfaction of all obligations imposed upon

Scarborough Properties by this Administrative Consent Order, the Department and the Spill Fund Administrator covenant not to sue or to take administrative action against Scarborough Properties for reimbursement of past cleanup and removal costs and future cleanup and removal costs the Department and the Spill Fund Administrator have incurred, and will incur, for the Contaminated Site provided Scarborough Properties remains in full compliance with this ACO.

61. In consideration of the payment that Scarborough Properties is making pursuant to paragraph 49 above, and contingent on the satisfaction of all obligations imposed upon Scarborough Properties by this Administrative Consent Order, the Department and the Spill Fund Administrator fully and forever release, covenant not to sue and agree not to otherwise take administrative action against Scarborough Properties for the Department's and the Spill Fund Administrator's causes of actions for natural resource damages.

62. This Administrative Consent Order will constitute an administratively approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to Scarborough Properties from contribution actions. The parties agree that Scarborough Properties is entitled, upon fully satisfying their obligations under this Administrative Consent Order, to protection from contribution actions or claims for matters addressed in this Administrative Consent Order.

63. In accordance with N.J.S.A. 58:10-23.11e2, the Department on [DATE TO BE INSERTED BEFORE EXECUTION OF ACO] published a copy of this Administrative Consent Order on the Department's website, published notice of this Administrative Consent Order in the New Jersey Register, and provided written notice to other potentially responsible parties in this case of which the Department had notice at the time of such publication. Such notice included the following information:

a. the caption of this case;

b. the names of the parties;

c. the location on which hazardous substance discharges occurred;

d. a summary of the terms of this Administrative Consent Order; and

e. notice that a copy of the draft Administrative Consent Order is available on the Department's website.

64. As a result of such notice, the Department did not receive public comments disclosing facts or circumstances that it determined would render the execution of this Administrative Consent Order improper, unreasonable or contrary to the public interest, and the Department has determined to execute this Administrative Consent Order as reasonable, appropriate and in the public interest.

65. Nothing in this Administrative Consent Order shall be construed as precluding the

Department and the Administrator from taking whatever action they deem necessary or appropriate to enforce the environmental laws of the State of New Jersey.

66. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order. The provisions and liability protections of this Administrative Consent Order do not apply to any subsequent purchasers of the Site. Any subsequent purchaser of the Site shall be considered a statutory permittee and a person responsible for conducting the remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and the ARRCS rules.

67. Nothing in this Administrative Consent Order shall be deemed an admission of any fault, fact or liability by the parties.

68. Each undersigned representative of a party to this Administrative Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Administrative Consent Order, and to execute and legally bind such party to this Administrative Consent Order.

69. This Administrative Consent Order may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Administrative Consent Order.

70. This Administrative Consent Order shall be effective upon its execution by Scarborough Properties and the Department.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: _____ By: _____
Rich Boornazian, Assistant Commissioner
Natural & Historic Resources

NEW JERSEY SPILL COMPENSATION FUND

DATE: _____ By: _____
Anthony Farro, Administrator

NEW JERSEY DEPARMENT OF ENVIRONMENTAL PROTECTION

DATE: _____ By: _____

Kevin F. Kratina, Assistant Director
Enforcement and Information Element

SCARBOROUGH PROPERTIES, LLC

DATE: _____ By: _____

M. Sean Scarborough
Managing Member